

MARK STEGER SMITH
Assistant U.S. Attorney
U.S. Attorney's Office
2601 2nd Ave. North, Suite 3200
Billings, MT 59101
Phone: (406) 247-4667
FAX: (406) 657-6058
Email: mark.smith3@usdoj.gov

JOHN M. NEWMAN
Assistant U.S. Attorney
U.S. Attorney's Office
P.O. Box 8329
Missoula, MT 59807
101 E. Front St., Suite 401
Missoula, MT 59802
Phone: (406) 829-3336
FAX: (406) 542-1476
Email: john.newman@usdoj.gov

ATTORNEYS FOR DEFENDANT
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

COUNTY OF POWELL, a political subdivision of the State of Montana, Plaintiff, vs. UNITED STATES OF AMERICA, ¹ Defendants.	CV 22-21-H-SEH NOTICE OF CORRECTION OF UNITED STATES' PRELIMINARY PRETRIAL STATEMENT
---	---

Pursuant to the Court's Order of June 3, 2022 (Doc. 11, ¶ 8), the United States provides the following corrections to its Preliminary Pretrial Statement

¹ The caption is amended to reflect the proper party in interest. Fed. R. Civ. P. 21; *Sawtooth Mountain Ranch LLC v. United States*, 2020 WL 184576 (D. Idaho Jan. 13, 2020) (citing *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 286 (1983)).

(Doc. 12). A Corrected Preliminary Pretrial Statement, containing the corrections delineated below in paragraphs A and C, will be filed separately from this Notice.

A. A brief factual outline of the case.

Plaintiff asserts that a road that runs north-south through Grant Kohrs Ranch National Historic Site (GRKO), owned and operated by the National Park Service, Department of the Interior (NPS), is a county right-of-way, established in part, under Revised Statute 2477 (R.S. 2477). The road is located specifically in the ~~NW $\frac{1}{4}$~~ and E $\frac{1}{2}$ of Section 32, Township 8 North, Range 9 West, of the Montana Principal Meridian and is also referred to as the West Side Road. Recently, Plaintiff has included that portion of the road as it traverses GRKO in its plans to establish a recreational trail known as the Old Yellowstone Trail (OYT) and has brought this action to quiet title to the alleged right-of-way.

C. The factual basis of each claim or defense advanced by the party.

Plaintiff's claims are time-barred under the QTA because GRKO blocked and controlled the West Side Road when it acquired the property in 1988. The United States' predecessor in interest (Con Warren), also blocked and controlled the West Side Road before 1988.

Plaintiff's QTA claims will also fail because they cannot prove the elements of a public prescriptive easement. There has been no open and adverse and uninterrupted use of the West Side Road across GRKO for the statutory (5-year) period. To the extent such use may have occurred historically, any putative prescriptive use right was extinguished by reverse prescription in 1938 (through the actions of Con Warren) and in 1988 (through the actions of the United States).

Plaintiff's claims also must fail because the location of current West Side Road (over the E $\frac{1}{2}$ ~~and NW $\frac{1}{4}$~~ of Section 32) does not correspond to the various historical road locations cited in Plaintiff's Complaint ~~(in the E $\frac{1}{2}$ of Section 32)~~. Plaintiff will not be able to establish historical use or R.S. 2477 right-of-way on the current route.

As stated in ¶ 8 of the Court's June 3, 2022 order, this correction is submitted within ten (10) days of the date the United States learned that correction was required.

DATED this 27th day of June, 2022.

JESSE A. LASLOVICH
United States Attorney

/s/ Mark Steger Smith
MARK STEGER SMITH
JOHN M. NEWMAN
Assistant U.S. Attorneys
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of June, 2022, a copy of the foregoing document was served on the following person by the following means.

<u>1, 2</u>	CM/ECF
<u> </u>	Hand Delivery
<u> </u>	U.S. Mail
<u> </u>	USAfx
<u> </u>	E-Mail

1. Clerk of Court

2. Gregory G. Schultz
Jeffrey R. Kuchell
CROWLEY FLECK PLLP
305 South 4th Street East, Suite 100
P.O. Box 7099
Missoula, Montana 59807-7099
(406) 523-3600 – phone
gschultz@crowleyfleck.com
jkuchel@crowleyfleck.com
Attorneys for Plaintiff

/s/ Mark Steger Smith
MARK STEGER SMITH
Assistant U.S. Attorney
Attorney for Defendant